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C O N F I D E N T I A L SECTION 01 OF 04 KATHMANDU 001890

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TAGS: [PHUM](#) [MCAP](#) [PTER](#) [NP](#)

SUBJECT: NEPALI ARMY'S EVOLVING APPROACH TO HUMAN RIGHTS

REF: A. (A) KATHMANDU 1372

[1](#)B. (B) KATHMANDU 1118

[1](#)C. (C) KATHMANDU 1191

[1](#)D. (D) KATHMANDU 1465

Classified By: POL PMAHONEY. REASON: 1.5 (B,D).

SUMMARY

[1](#)1. (C) In the ten months it has been mobilized against Maoist insurgents, the Royal Nepal Army (RNA) has had to change from a ceremonial, parade-ground army, occasionally deployed in UN Peacekeeping Operations, to a combat-ready fighting force, expected to counter and overcome an enemy who uses guerrilla tactics and outright terrorism to advance its aims. Among the many tools RNA troops and their leadership lacked when called into action were adequate human rights training and mechanisms to investigate allegations of violations. The RNA leadership initially appeared reluctant to address such allegations, but has since developed a unit within the office of its Judge Advocate General to review complaints. The quality and adequacy of these investigations are yet to be proven. In the meantime, the Embassy is providing training to help improve soldiers' awareness of human rights in the field and best practices in conducting investigations of violations. The Embassy believes remaining engaged with the RNA through a sustained dialogue on human rights is the best way to ensure that respect for human rights is institutionalized during the Army's difficult transition from a parade-ground army to a capable fighting force. End summary.

FROM THE PARADE GROUND TO THE TRENCHES

[1](#)2. (SBU) During the first five years of Nepal's six-year-old Maoist insurgency, the Royal Nepal Army (RNA), under the technical command of the country's constitutional monarch, remained in its barracks, emerging only to take part in ceremonial Palace functions or to participate in sought-after UN Peacekeeping missions. The brunt of the Maoists' anti-government wrath at that time was largely borne by the civilian police, more than 500 of whom were killed by the insurgents in the first five years of the conflict. During those years, individual police were guilty of a number of human rights violations against rural populations in conflict-affected areas, the most sensational being the infamous Kilo Sera To operation in 1998, in which numerous suspects were killed, tortured and arrested.

[1](#)3. (SBU) The RNA's role changed virtually overnight November 23 when Maoists, who had unilaterally broken a four-month ceasefire just a day before, attacked an army barracks, killing 11 soldiers and their commanding officer. By November 26, King Gyanendra, the RNA's Supreme Commander, had declared a state of emergency which suspended nearly all civil rights guaranteed by the Constitution and mobilized the RNA against the insurgents. Since then, more than 200 RNA soldiers have died in the conflict.

[1](#)4. (SBU) Most Nepalis, weary of the insurgency, welcomed the deployment of the RNA, which was widely perceived as more professional, better disciplined, and better equipped than the police. The Army's close association with the Palace--which had previously also remained largely aloof from the conflict--helped foster that perception. Sanguine predictions from the beleaguered population that the Army would finish off the insurgents within a few months were common.

[1](#)5. (C) But in many ways the RNA was, at the time, particularly ill suited to counter a guerrilla insurgency. Despite the ongoing conflict--and the obvious possibility that the RNA might one day be mobilized--the military budget had been slashed over successive years. Their weapons, uniforms, and boots may have looked nice on a parade ground but proved unable to withstand battle conditions in difficult terrain. The RNA leadership, most of whom are members of the elite Chhetri caste of the King, had spent most of their

relatively comfortable careers to date insulated from public criticism of their performance. Becoming suddenly accountable to a civilian government and a public with inflated expectations was not a comfortable transition. Their officers--generally also from the higher castes--tended to be aloof from lower-caste speaking ethnic minorities who predominate in Maoist-affected areas, making it difficult for them to gain popular support or to exploit local intelligence assets.

MAOISTS WAGE DIRTY WAR

16. (SBU) Since the RNA's deployment, the operational tempo on both sides has increased dramatically. Of the 5,353 Nepalis who have been killed in the insurgency since it began in February 1996, more than half (3,055) have died since the beginning of 2002 alone. The Maoists have recently stepped up their campaign of terror against innocent civilians, most likely in an effort to discourage participation in national elections in November. In the first two weeks of September, the insurgents killed more civilians than they had in any single month of 2002. Nor have the Maoists relented in their attacks against the security forces, killing more than 100 policemen and soldiers in two separate, mass attacks September 7 and 8.

17. (U) The Maoists' use of brutal tactics against their targets, many of whom are civilian, is undeniable. They have murdered teachers, local political workers, and simple farmers by decapitation, slashing them with knives, and beating them to death, sometimes torturing their victims before killing them. They have dragooned countless unwilling villagers into their ranks, using many, including children, as human shields. They bomb residential, commercial and government edifices without prior warning, and have made a practice of destroying rural infrastructure--bridges, roads, micro-hydroelectric schemes, drinking water projects, schools and health posts--leaving thousands without electricity, water, or access to the outside world. They launch human wave attacks to overrun fixed positions, and have summarily executed those who are wounded or surrender to them. They wreak revenge on police and soldiers by assassinating members of their family.

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ACCOUNTABILITY DIFFICULT UNDER STATE OF EMERGENCY

18. (C) The high operational tempo; the lack of appropriate equipment, adequate manpower, and sufficient training; the pressures of having to negotiate remote, often inaccessible terrain; the difficulty of distinguishing friend from foe in a domestic insurgency; the ineffectiveness of civilian government in conflict-affected areas; the brutality of Maoist tactics--all of these factors undoubtedly complicate the RNA's mission. The state of emergency, which remained in near-continuous operation from November 26-August 28, was intended to help mitigate the difficult circumstances under which the RNA found itself required to operate. (Note: Some critics contend the RNA leadership made deployment conditional upon the declaration of a state of emergency. We have no proof that the RNA made such a demand, but have heard its leadership assert that the state of emergency makes their job easier. End note.)

19. (C) The state of emergency, which was initially ratified by the now-defunct Parliament in February, suspended all constitutionally guaranteed civil rights except the right to habeas corpus. Most important, the emergency granted the police, paramilitary Armed Police Force, and Army broad powers to search without a warrant and to detain suspects without charge for 90 days (with the possibility of another 90-day extension). The ordinance did not explicitly require the security forces to maintain a log of individuals taken into custody, nor did it make provision for notification of the families of detainees--let alone visits by family or legal counsel. (The ICRC is routinely told by the RNA that the military does not have any detainees--even though Embassy personnel have seen some detainees during visits to barracks.)

110. (SBU) Restrictions on free press--both as a result of self-censorship and the suspension of the right to information--also cloud the situation. The press corps, often legitimately afraid of venturing into conflict-affected areas, generally rely upon verbatim Ministry of Defense press releases for information. The bulk of these press releases offer a one-line report of the killing of one or two Maoists without further clarification of the nature of the engagement, the identity of the Maoists, or whether any security forces were killed or injured. (The exceptions, of course, are accounts of major engagements, where press coverage is more extensive.) The overwhelming majority of

those killed in the conflict this year--75 percent--are those described as Maoists in Ministry of Defense press releases. (Note: Official accounts of Maoist dead in large engagements are generally unreliable. Wherever conflicting numbers have been offered, we have consistently recorded the more conservative estimate. According to the Government's official tally, the Maoist death toll is much higher. End note.) At a May 28 battle at Khara, Rukum, the RNA officially claimed 300 Maoists were killed--but none wounded or taken prisoner. The Ministry of Defense has reported at least 260 separate incidents since January in which a single Maoist was killed by security forces with no further reporting on other Maoists injured or taken prisoner in the incident, or the nature of the engagement. It thus remains unclear exactly under what circumstances these 260 individuals died. However, when poloff asked RNA officers why so many individual Maoists were getting killed with no corresponding reporting of a battle or engagement, the officers explained that most were "shot while trying to escape."

11. (C) The RNA's overarching suspicion of most human rights organizations as overly sympathetic to the Maoists limits the Army's interaction with these groups. Many of these organizations are equally suspicious of the RNA. One NGO that treats victims of torture regardless of political affiliation has had to cease operations in some areas, its director says, because of Army pressure. The National Human Rights Commission, the ostensibly autonomous constitutional body with responsibility for investigating violations, is highly politicized and largely dysfunctional. (As noted Ref D, we believe the National Human Rights Commission is deeply flawed.) With the expiration of the terms of local government officials in July, one last source of independent information in some of these remote areas has dried up. The combination of these factors--limited press coverage, a weak civil society, and the absence now of any independently elected political leadership at either the national or local levels--has left Nepal with an inadequate system of checks and balances to the near-unlimited right of security forces to detain and question. Under such conditions--where all we may ever have is a one-source allegation of an abuse--it is especially difficult to determine the credibility of either version.

RNA HUMAN RIGHTS CELL

12. (C) In July the RNA announced the formation of a human rights cell under the direction of the Judge Advocate General (Ref A) to review the results of investigations into alleged violations. According to JAG Brig. Gen. B.A. Sharma, who heads the cell, the unit has received no complaints thus far of extra-judicial killings. Instead, most inquiries focus on determining the whereabouts of suspects believed to be in RNA custody. Since the RNA maintains no central log of detainees and because suspects often refuse to reveal their true names, Sharma said, it is difficult to determine whether the missing people are indeed in RNA custody. Sometimes detainees do not want it known they are in RNA custody for fear of Maoist retaliation against their family, he suggested. Sometimes the RNA has to keep prisoners at its barracks because local jails are full. The RNA still has to fix the procedures for determining the whereabouts of detainees; as of now his unit simply asks the local commander if the person in question is in his custody. The Army is now starting to notify the Chief District Officer (the senior civil servant in the district) of the names of individuals in its custody. Sharma said he has advised commanders to notify the families of detainees of their whereabouts and their welfare.

13. (C) Poloff asked about any other pending investigations, including the promised inquiry into the death in custody of Kancha Dongol March 15 (Ref C). That investigation is underway; its likely outcome, according to the major spearheading the inquiry, is a finding that Dongol (who sustained six gun shots and whose body showed evidence of torture) made a grab for one of his captors' guns. An investigation into the November 30 killings of five villagers in Rolpa, who were shot from an RNA helicopter, had revealed that the aircraft had been fired on first. Poloff asked about the May 1 shootings of six men in Sindhupalchowk (Ref B), noting recent coverage of the event in a London newspaper. Sharma replied that an inquiry had revealed that the six men had fired on RNA soldiers--a version that differs significantly from that offered Ref B by both the CDO and the local police commander. Poloff asked about the June 29 killings by the RNA of four suspected Maoists in Ramite Khola, Morang. According to a report from a local NGO, the four men were kept handcuffed on display in the public market for part of the day and then taken near a school where they were shot. Sharma said he was unaware of the incident and would look into it.

14. (C) The RNA leadership has on numerous occasions assured us of its willingness to respect international human rights standards and has agreed to accept training for its troops and officers on the topic. Although all soldiers are educated on Rules of Engagement and are aware that they should not torture or kill suspects, the exigencies of the situation necessitated deployment without adequate training on human rights during conflict, the officers have explained. The RNA's top leadership is well aware of the negative effect human rights violations would have on our expanding military-to-military relationship and related security assistance--as well as on their own forces' good order and discipline. Nonetheless, they clearly view the dirty-war tactics of their Maoist adversaries as a mitigating factor, making compliance with human rights standards difficult.

15. (C) Despite this attitude, we are seeing some significant progress. The reactivation of a Joint Combined Exercise and Training (JCET) program after a five-year hiatus has intensified our human rights dialogue with the RNA. We (and the British) pressed the RNA to develop the independent human rights cell so formed in July. (Previously all complaints were investigated by the commander of the suspect unit himself.) While the quality and breadth of the investigations undertaken by this unit remain to be seen, the RNA's willingness to accept training in this area is a reassuring sign. The UK government is examining the possibility of detailing a British army officer to the unit to assist it in its early stages. In addition, 14 RNA officers, at the rank of Colonel and above, attended a September 25-26 workshop on the Law of Armed Conflict, with training jointly offered by representatives of the ICRC and the USG's Defense Institute of International Legal Studies.

16. (C) Without other independent organs like the media and human rights groups operating in conflict-ridden areas, it is difficult either to corroborate or refute the RNA's version of events, or to gather "credible evidence" of violations that amounts to much more than allegations. The absence of checks and balances during the state of emergency, which expired August 28, allowed the RNA to operate with a certain degree of impunity. That said, the RNA is now developing, like so much else in its repertoire, rules to implement the human rights standards it knows it must inculcate in its soldiers. Progress, especially initially, has been rocky but is showing some improvement. To the extent possible, it is important to remain engaged with the RNA, via our ongoing dialogue on human rights, as it begins this important process.

HALE